

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for)
Termination of Probation of:)**

JENNIFER LYNN MCLAIN, M.D.)

Case No. 800-2016-023293

**Physician's and Surgeon's)
Certificate No. A 85109)**

OAH No. 2016101073

**Respondent)
_____)**

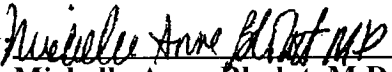
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 14, 2017.

IT IS SO ORDERED March 16, 2017.

MEDICAL BOARD OF CALIFORNIA

By 
**Michelle Anne Bholat, M.D., Chair
Panel B**

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MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition for Termination
of Probation of:

JENNIFER LYNN McLAIN, M.D.,

Physician's and Surgeon's Certificate
Number A 85109,

Petitioner.

Case No. 800-2016-023293

OAH No. 2016101073

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on February 2, 2017, in Los Angeles, California.

Sarah E. Hersh, Attorney at Law, represented Jennifer Lynn McLain, M.D. (Petitioner).

Colleen M. McGurrin, Deputy Attorney General, represented the Attorney General of the State of California pursuant to the provisions of Government Code Section 11522.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 85109 to Petitioner on November 5, 2003. The certificate is current with an expiration date of February 28, 2018.

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2. Petitioner is a board-certified psychiatrist.¹ Effective November 23, 2011, in case number 16-2010-208743, the Board placed Petitioner on probation for a period of four years² under the provisions of Business and Professions Code section 2305 (license discipline by another state).³ Petitioner's current probationary status arises from a disciplinary action taken by the Massachusetts Board of Registration in Medicine against her medical license in that state. On July 21, 2010, that board issued an order, pursuant to stipulation, whereby Petitioner stipulated to the imposition of an order staying an indefinite suspension of her medical license, and placing her on probation for an indeterminate time.

3. The facts and circumstances giving rise to the Massachusetts order are spelled out in the Consent Order issued by its medical board. The facts are as follows:

2. Patient A is a female born in 1979 with a diagnosis that includes borderline personality disorder with a history of treatment for depression and anxiety, including two brief psychiatric hospitalizations; physical and sexual abuse in childhood; self harm; and ongoing distress from sleep difficulties, nightmares, flashbacks, and suicidal ideation.

3. On June 25, 2007, the Respondent first saw Patient A for a psychopharmacology evaluation at Fenway [Community Health Center].

4. The Respondent acted as Patient A's psychopharmacologist from June 25, 2007 to March 27, 2008. Patient A saw the Respondent at Fenway for these visits.

5. On March 27, 2008, the Respondent also became Patient A's psychotherapist. The psychotherapy began in conjunction with the Respondent's fellowship program.

6. Prior to March 2008, the Respondent had not treated a patient diagnosed with borderline personality disorder in therapy.

7. On June 21, 2008, Patient A was hospitalized for a suicide attempt.

8. On June 28, 2008, Patient A was hospitalized for a suicide attempt.

9. After Patient A's hospitalizations, the Respondent obtained an additional single consultation with a psychiatrist, who was not a current supervisor, prior to resuming psychotherapy with Patient A.

10. In July 2008, following the completion of her fellowship program, the Respondent began seeing Patient A in private practice.

¹ Her board certification was suspended the same day she was placed on probation in Massachusetts.

² Because Petitioner has resided in Massachusetts continuously since the Board placed her on probation, the four-year period has been tolled in its entirety under the provisions of section 9 of the Board's order.

³ The Board imposed only its standard terms and conditions of probation as the Massachusetts discipline included terms the Board normally would have imposed given the facts of this case.

11. During therapy sessions, the Respondent touched Patient A [in a non-sexual manner] when Patient A became distressed.
12. During therapy sessions, Patient A and the Respondent discussed “mutual analysis” and “dual roles.”
13. During therapy sessions with Patient A, the Respondent revealed personal information to Patient A in response to Patient A's questions.
14. The Respondent conducted extended therapy sessions with Patient A, including one session that lasted from early evening until approximately 3 a.m.
15. The Respondent conducted frequent extra therapy sessions with Patient A both in person and via telephone when Patient A was in crisis.
16. The Respondent and Patient A frequently spoke to each other on the telephone outside of therapy sessions at Patient A's request.
17. The Respondent and Patient A frequently communicated via text messages utilizing a code developed between the Respondent and Patient A at Patient A's request.
18. The Respondent and Patient A frequently communicated via electronic mail.
19. On October 14, 2008, the Respondent and Patient A met at the Arnold Arboretum [which is across the street from Respondent's house] a multi-hour meeting.
20. On October 14, 2008, the Respondent allowed Patient A into the Respondent's home to use the restroom.
21. The Respondent's treatment of Patient A ended on October 17, 2008.
22. The Respondent's treatment of Patient A, as set forth in Paragraphs 11-20, failed to meet the standard of care.

4. One important fact is missing from the foregoing recitation of facts: Petitioner herself recognized that she had crossed the therapist-patient boundary and reported herself to her supervisors three days after she let Patient A into her home. She never attempted to shift blame to the patient.

5. The following is a lengthy passage from Petitioner's Narrative Statement. It is repeated here because every fact stated was proven at the hearing. Petitioner's supporting evidence included the oral testimony of Ronald DiBiase, LCSW, a board certified diplomate in clinical social work, who was one of Respondent's supervisors, Dr. Kevin Kapila, a psychiatrist and the Director of Fenway who monitored Petitioner closely for the five years of her probation, Dr. Luanne Grossman, a psychotherapist who has treated Petitioner regularly since 2008, and Petitioner's own testimony. In addition, Petitioner presented a letter from Dr. Jerome Rogoff who teaches at Harvard and who currently supervises Petitioner's clinical work. Drs. Kapila and Grossman and Mr. DiBiase also wrote letters. Petitioner included 218 pages of documentation to support her Petition:

I have worked and practiced in Massachusetts, including completing the terms of my Massachusetts Probation Agreement, which was terminated on September 24, 2015. Based upon my successful completion of five years of

probation in Massachusetts, which included continuous practice in a group practice monitored by an ABMS certified psychiatrist with quarterly reports to the Massachusetts Board -- as would have been required had I practiced in California -- and for the reasons set forth below, I respectfully petition the California Board to terminate my probation. . . .

I began treating [the patient] for psychopharmacology in June 2007 at Fenway Community Health Center (Fenway Health) in Boston. The patient's diagnosis included Borderline personality disorder and post-traumatic stress disorder with a history of treatment for depression, anxiety [and] chronic suicidality. I became the patient's psychotherapist in March 2008. At that time, I was near the end of my fellowship program in Psychodynamic Psychotherapy at Faulkner Hospital in Boston. This was the first patient I treated in therapy with Borderline personality disorder. The complaint alleged that I failed to maintain appropriate boundaries during psychotherapy. I had no prior issues regarding the maintenance of boundaries.

I fully cooperated with the Massachusetts Board during its investigation. From the beginning, I was forthcoming and took responsibility for my actions. I recognized and acknowledged that despite seeking regular consultation and supervision regarding my treatment, I committed beginner's errors in my attempts at limit-setting with this extremely difficult and demanding patient. The crossings were entirely non-sexual in nature. I extended myself in a number of ways, including acceding to the patient's requests for out of office contact, with the intention to meet her ever-increasing needs. Due to the patient's inability to comply with therapeutic framework, I initiated termination of treatment in October 2008. . . .

[M]y work at Fenway Health and in my then-active private practice was supervised by senior psychiatrists who reported to the Board they found nothing to suggest any problems with boundaries or the therapeutic frame with the rest of my patients. The case was also reviewed by Thomas Gutheil, M.D., a leading expert on the maintenance of boundaries in clinical practice, who confirmed that the crossings were not exploitative of the patient nor for any personal gain or gratification on my part. I voluntarily resolved the matter with the Massachusetts Board with a Consent Order in July 2010 with no break in my ongoing practice. Since entering into a probation agreement with the California Board in 2011 I have continued to work at Fenway Health as a staff psychiatrist treating over 200 patients a month in multiple modalities. Since 2012 I have also practiced at the Center for Psychiatric Medicine in North Andover, Massachusetts as a contract psychiatrist. During this time, I have treated many patients with similar diagnoses without any difficulties with boundaries. I have gained a significant amount of experience and skill since I terminated treatment with this patient in 2008. My practice has been enriched by the supervision and education I obtained during my Massachusetts

probation and I believe I have become a better physician as a result of this process. [¶] . . . [¶]

I sought out supervision and therapy to understand my own process and dynamics in the treatment that led up to my mistakes with this patient. . . . In 2008, I began psychotherapy with Luanne Grossman, Psy.D. and have continued treatment with Dr. Grossman to the present. As part of the terms of my probation with the Massachusetts Board, I attended individual psychotherapy for five years (2010-2015) with Dr. Grossman, who submitted written reports to the Massachusetts Board on a quarterly basis to confirm my attendance and compliance with psychotherapy. I have attached a copy of the letter Dr. Grossman wrote to the Massachusetts Board confirming my compliance with her treatment plan during the five-year probation period. Since my Massachusetts probation was terminated in September 2015, I have voluntarily continued psychotherapy with Dr. Grossman.

After the complaint was filed in Massachusetts, I engaged Jerome Rogoff, M.D. a senior board-certified psychiatrist with a teaching appointment at Harvard Medical School to supervise my then private practice and to identify any potential boundary crossings or countertransference issues and to discuss at length the complaint against me and my role in the generation of that complaint. . . . As set forth in his letter [filed in support of this Petition], Dr. Rogoff found nothing to suggest any problems with boundaries or the therapeutic frame with any of my other patients.

After I terminated my treatment with the patient in October 2008, I notified my supervisor at Fenway Health, Kevin Kapila, M.D. I was open with him about my mistakes with this patient and took full responsibility for those mistakes. I met with him weekly for supervision. As part of the terms of my probation with the Massachusetts Board, I met with Dr. Kapila, who is a board-certified psychiatrist, weekly for supervision during the term of my probation (2010 to 2015) I continue to meet with Dr. Kapila for supervision on a biweekly basis. [¶] . . . [¶]

In addition to the weekly supervision with Dr. Kapila, during my probation period with the Massachusetts Board, I took the extra steps of obtaining additional private supervision for my individual and group therapy cases, which was not required by the Massachusetts Board. From June 2010 to November 2015, I met biweekly with Dr. Laura Pang, psychologist, for supervision of my individual therapy cases. From June 2010 to present, I have met biweekly with Dr. Scott Rutan, psychologist, for supervision of my group therapy patients. Further, for the past five years, I have also regularly attended several peer supervision groups, which again was not required by the Massachusetts Board, where all facets of clinical practice including therapy, management of difficult and Borderline clients, maintaining appropriate

boundaries and other ethical issues are discussed. I continue to regularly attend a peer supervision group at Fenway Health.

In sum, I have spent a great deal of time and effort to understand my mistakes in my treatment of this patient and learn about the optimal treatment methods for patients with Borderline personality disorder and the maintenance of proper boundaries. I have pursued multiple venues to increase my understanding of what occurred specifically in this case, as well as to supplement my training more globally. I completed further coursework in both general therapeutic work as well as a specific [three-day] course on Boundary Maintenance at Vanderbilt in January 2010. I participated in monthly literature review with my colleagues to study the complex dynamics of Borderline personality disorder and its treatment as well as treatment of suicidal patients and other pertinent topics. I have continued biweekly individual supervision for my ongoing therapy caseload and biweekly participation in two peer consultation groups, as well as my own personal psychotherapy. In addition, I obtained further oversight/supervision of all of my caseload from my Board-approved psychiatrist monitor who reviewed my chart notes with a specific focus on identifying any potential boundary crossings or countertransference issues.

The mistakes I made during my treatment of this patient was [*sic*] an isolated incident. I have had no prior or subsequent issues maintaining proper boundaries with my patients. I had no prior disciplinary history and have had no prior or subsequent complaints. I took full responsibility for my conduct during the Massachusetts Board's investigation of this matter. I have learned a great deal from my mistakes and have been committed to ensuring that I maintain professional boundaries in all of my interactions with patients as evidenced by my full compliance with the measures required by the Massachusetts Board and the extra steps I have taken such as further education, study, and peer supervision. Based on the successful completion of my probation with Massachusetts Board, and the extensive rehabilitative measures set forth above, I respectfully request that the California Medical Board terminate my probation

6. During her probation, Petitioner engaged in an extraordinary amount of continuing education on boundary issues. Petitioner completed the following courses and workshops on boundaries, in addition to her regular continuing education: Three-day course at Vanderbilt University Medical School, Center for Professional Health "Maintaining Proper Boundaries;" American Group Psychotherapy Association classes on "Boundary Crossings," "Self-Disclosure and Boundaries," "Clinical and Ethical Implication of Boundary Crossings," "The Group Therapist and Self-Disclosure," and "Boundaries, Treatment Contracts and Limit-Setting." She also took classes from other providers including such classes as "Medical Ethics for Physicians" and "Risk Management." She also read numerous books and articles on boundary issues.

7. In addition to carrying her full case load and engaging in substantial continuing education, Petitioner found time to teach such training sessions at Fenway as “Boundary Crossings in Everyday Clinical Practice” and “Non-Sexual Boundary Crossings in Everyday Clinical Practice.” She also volunteers her time at the Northeastern Society for Group Psychotherapy and in July 2015 she began a three-year long position leading a weekly training group for psychiatry residents at Massachusetts General Hospital.

8. Although Petitioner has no immediate plans to practice in California. She wants to maintain her California certificate because her parents live in this state, and as they age, Petitioner may find that she must return here to be with them. Petitioner has fully rehabilitated herself from the conduct for which she was placed on probation and there is no impediment to the full restoration of her certificate.

CONCLUSIONS OF LAW

Statutory Authority

1. Business and Professions Code section 2307 provides, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified

recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

Regulatory Authority

2. California Code of Regulations, title 16, section 1360.2 provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

The Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license or a petition for penalty relief, the burden rests on the petitioner to prove that she has rehabilitated herself and that she is entitled to have her license restored or be relieved from further requirements of probation. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (See *Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

5. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California*, *supra*, 49 Cal.3d at p. 1092.)

Relevant Factors in Determining Rehabilitation

6. Petitioner has no other disciplinary record, which is a mitigating factor. (See, *Segretti v. State Bar of California* (1976) 15 Cal.3d 878, 888.)

7. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Not only has Petitioner complied with all terms of her probation, she has gone above and beyond that which was required of her.

Cause Exists to Grant the Petition and Terminate Probation

8. Petitioner's medical competence over the past five years has not been questioned and her employer and practice monitor find her to be a competent, well-liked physician. Respect within the medical community evidences that she is well along in the process of rehabilitation. (See *In re Dedman* (1976) 17 Cal.3d 229, 234.)

9. Cause exists under Business and Professions Code section 2307 and under California Code of Regulations, title 16, section 1360.2, to grant Petitioner's petition and to terminate the license probation that was imposed by the Board.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Jennifer Lynn McLain, M.D. for termination of probation is granted. Physician's and Surgeon's Certificate Number A 85109 is fully restored.

Date: February 22, 2017

DocuSigned by:
Ralph B. Dash
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RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings